



BellSouth Telecommunications, Inc.

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January 16, 2001

Guy M. Hicks
General Counsel

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VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Generic Docket Addressing Rural Universal Service*
Docket No. 00-00523

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Petition for Appeal. BellSouth respectfully requests that this matter be taken up by the Directors on Tuesday, January 23, 2001. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to be "Guy M. Hicks".

Guy M. Hicks

GMH:ch
Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

IN RE: *Generic Docket Addressing Rural Universal Service*

Docket No. 00-00523

BELLSOUTH TELECOMMUNICATION, INC.'S PETITION FOR APPEAL

BellSouth Telecommunications, Inc. ("BellSouth") hereby files, pursuant to Tennessee Code Annotated Section 4-5-315, its Petition For Appeal of the Initial Order of Hearing Officer entered in the above-referenced docket on December 29, 2000, and states the following:

The Initial Order entered in this matter should be reviewed and rejected because it does not comply with the requirements of Tennessee law. More specifically, the result ordered in the Initial Order is inconsistent with the legal conclusions contained in the Order. For this reason, BellSouth requests that the Tennessee Regulatory Authority ("TRA" or "Authority") enter a Final Order as described below.

BellSouth and a number of rural carriers have had in place for many years contracts for Intrastate Toll Settlements. As stated in the background section of the Initial Order, "Since divestiture, in 1984, the Rural Carriers have agreed to be compensated for intraLATA toll calls through participation in a toll settlement process managed by BellSouth." (Order, p. 4). Essentially, this arrangement was designed by agreement between BellSouth and these carriers; it was not ordered by

the TRA (or its predecessor regulatory body), nor was it entered pursuant to any specific Tennessee law that dictated the form of the arrangement. By way of additional background, the Order notes:

In the ensuing years, in instances where it was determined that BellSouth was earning in excess of its authorized rate of return,¹¹ the Tennessee Public Service Commission ("PSC") Ordered BellSouth to, among other rate adjustments, reduce interLATA toll rates. The PSC, based on its authority and jurisdiction over intraLATA toll settlement agreements, which BellSouth did not challenge, and through its lawful regulatory directive, intentionally maintained the Rural Carriers' compensation levels. (Order p. 5)

Further, footnote eleven (indicated in the above-quoted portion of the text) stated that "BellSouth was then a rate-of-return regulated company; and, as such, was entitled to earn an authorized fair rate of return. BellSouth is, today, regulated under the state's price regulation statute, Tenn. Code Ann. § 65-5-209." The Order cites to no other instance in which the TRA or the Tennessee PSC have been involved in any way in the subject toll settlement agreements.

The Order concludes that toll settlement contracts include two distinct components: (1) the arrangements "that are embodied within the Agreements entered into between BellSouth and the Rural Carriers" (Order, p7); (2) The agreements themselves, which are essentially a matter of private contract. The Order states that "BellSouth may have acted within its contractual rights in unilaterally terminating its existing contracts as of December 31, 2000, and the Hearing Officer does not take issue with the exercise of such rights." (Order, p. 12). Paradoxically, the Order also states that "the arrangement, outside of the existing contract, is ordered to be maintained on the same rates, terms, and

conditions as were contained in the terminated intraLATA toll agreements.” (Footnote 8, p. 12). In other words, under the Order, BellSouth has the right to terminate the contract, but the contract arrangement must remain in place (including the compensation levels) as if the contract were not terminated. Put differently, the “arrangement” has been construed to be so extensive that, practically speaking, nothing (not even compensation levels) is deemed to be a part of the “agreement”, i.e., that part which can be terminated by the parties.

Even assuming for the sake of argument that there is both a public interest component and a private contractual component to the contracts, BellSouth believes that the Initial Order has set the dividing line between these two components at the wrong place. Instead, the “arrangement” should be construed as the provisions that are in place whereby end-users in the areas served by the rural carriers receive intraLATA toll service. If the issue now before the TRA involved a potential disruption to that service, then the TRA would be empowered to step in to prevent that disruption, pursuant to the statutory authority that is detailed on page 11 of the Initial Order. This, however, is not now, nor has it ever been, a possibility. As BellSouth stated in its Reply Comments filed previously in this proceeding,

. . . [B]y referring to the termination of agreements, the Coalition gives the impression that traffic will no longer be exchanged. This is not the case. BellSouth does not contemplate any change in physical facilities. Instead, what BellSouth has requested that independent companies do, (and what they have declined to do to date), is to negotiate a change in the compensation arrangements for the exchange of traffic. (Reply Comments, p. 4.)

Thus, there is no question but that the physical arrangements whereby end-user/customers receive intralata toll service will remain in place.

The real dispute in this matter is between the position of the Rural Carriers that the compensation rates should not be changed in any way unless the TRA orders such a change, and the position of BellSouth that it may terminate the existing contracts (more specifically the rates), and commence to negotiate new rates. BellSouth submits that it is this second, distinct part of the equation, the compensation mechanism, that should properly be viewed as the private agreement between the parties.

However, a review of the Order shows that it is only this "private" part of the contract that has ever been subject to involvement by the TRA or its predecessor. The Order notes as the only instance of a past regulatory involvement, the PSC's approval of BellSouth's rates, which were based on this arrangement at a time when BellSouth was under rate of return regulation. As the Order specifically acknowledges, however, the PSC's oversight arose from the requirements of rate of return regulation, and BellSouth is no longer subject to that particular regulatory scheme. Thus, any authority the Tennessee PSC may once have exercised over the compensation component of these agreements as a function of rate making is no longer available to the TRA under the current statutory form of regulation.

The Initial Order appears to reach the contrary conclusion, i.e., that having once approved the arrangement as a part of rate making, the Authority retains

jurisdiction even under the current form of regulation. The fallacy of this approach is that it fails to acknowledge that the statutes have changed, and that the authority over rate making, which was the only justification for past oversight of the compensation agreement, has changed as well. BellSouth submits that, under the current regulatory scheme, the issue of compensation for this traffic exchange is one that should be determined solely by negotiations between the parties.

As there is presently no threat (nor any anticipated threat) to the services received by end users, the real error in the Initial Order is the finding that, not only shall the arrangement for service remain in place, but also that, it shall "be maintained on the same rates, terms and conditions." (Footnote 28). This has the effect of freezing the compensation levels at the current rate in a manner which, under the current regulatory scheme, is not warranted.

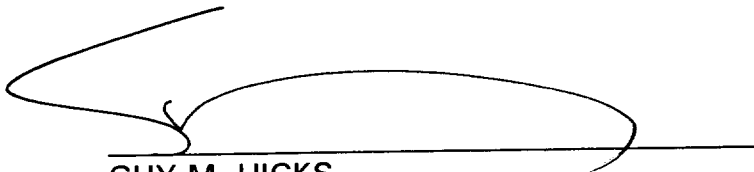
Therefore, BellSouth submits that a more appropriate course of action is to issue a Final Order that states that, while the arrangement whereby customers are served cannot be modified without TRA approval, the parties are free (now that the previous contract has been terminated) to negotiate an appropriate rate for this traffic exchange. Any rates agreed to by the parties should be trued-up so that they are, in effect, in place beginning January 1, 2001.

WHEREFORE, BellSouth respectfully requests the entry of a Final Order stating that, while the arrangement whereby customers in rural areas receive toll service cannot be modified without TRA approval, the rates to compensate for the exchange of this traffic (that applied under the now-terminated agreement) no

longer apply. The Order should further provide that the parties shall attempt to negotiate new rates. Further, any rates negotiated by the parties shall be trued-up so as to be effective to January 1, 2001.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "GUY M. HICKS", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

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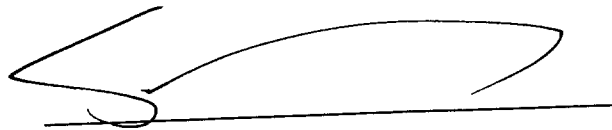
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